IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Tr.P(Crl.).No. 18 of 2006(B)

ST.80/2005 of C.J.M.,MANJERI

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PETITIONER:

MR.N.K.CHELLAPPAN,
S/O.P.K.NAMBIAR, SREEDHARMA SASTHALAYAM,
AMBALAVAYAL, PALLIKKUNNU,
P.O.CHALAD, KANNUR.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. MR.P.M.YOUSUFF, S/O.ALAVI,
PULLUSSERI MADALLIL HOUSE,
THERRALKAL, MANJERI.

R1 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
R2 BY ADV. SRI.BABU S. NAIR

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Tr.P.(Crl).No. 18 of 2006

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Dated this the 13th day of February, 2007

O R D E R

The petitioner is an accused in a prosecution under Section 138 of the N.I. Act initiated by the second respondent and pending before the Chief Judicial Magistrate Manjeri. The petitioner wants the said case to be transferred to Kannur, where he resides. There is no contention that the court at Manjeri has no territorial jurisdiction. The only submission is that the petitioner is sick and invalid and that continuance of the proceedings at Manjeri would affect his right to properly defend the prosecution against him. The petitioner would find it very difficult to appear before the C.J.M. on all dates of posting. The petitioner has not so far entered appearance before the learned Magistrate.

2. The application is opposed by the counsel for the respondent/complainant. The learned counsel submits that it would be unjust and inequitable to compel the respondent to proceed to Kannur to prosecute his complaint, merely because the respondent has his place of residence at Kannur.

3. Having considered all the relevant inputs, I am satisfied that there can be a direction to the learned Chief Judicial Magistrate, Manjeri not to insist on personal appearance of the petitioner for the purpose of trial. The petitioner can apply for exemption through counsel and the learned Magistrate, in the circumstances of the case, must consider such application favourably and permit the petitioner to be represented by counsel. Only if absolutely essential, personal appearance of the petitioner shall be insisted by the learned Magistrate. The petitioner shall appear through counsel before the learned Magistrate on 5.3.2007.

4. This transfer petition is dismissed, but with the above specific observations.

(R. BASANT)
Judge

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